IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

CRL.A.No. 306 of 2003()

SC.517/2001 of ADDL.SESSIONS COURT, KOZHIKODE
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APPELLANT: ACCUSED

M.MUKUNDAN, S/O. ONAKKAN,
MATHATHA HOUSE, VILLIAPALLY,
KOZHIKODE DISTRICT.

BY ADV. SRI.M.ASOKAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON 24/09/2007 DELIVERED THE FOLLOWING:

ORDER ON CRL.M.P.NO.1739/2003 IN CRL.A.NO.306/2003

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

24/09/2007

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K.R.UDAYABHANU, J.

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Crl.A.No.306 of 2003-A

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Dated this the 24th day of September, 2007

J U D G M E N T

The appellant who is the accused in S.C.No.517/2001which is the split up case from S.C.No.458/1999, has sought for setting aside the order of conviction and sentence imposed by the court of Additional Sessions Judge, Kozhikode, for the offence under Section 498A I.P.C. Originally, he along with seven others who are his parents, sisters, sister-in-law and brother's son were arrayed as accused. Except the appellant, the rest were tried and acquitted by the court as per order in S.C.No.458/1999.

2. The allegation is that Ashalatha, the wife of the accused whom he married on 15/10/1994, committed suicide on 13/09/1997 on account of the harassment demanding dowry by the accused herein and the accused in S.C.No.458/1999. The deceased has left an infant daughter as well. The allegation is that the accused, who was working abroad, at the instance of the rest of the accused were constantly harassing the deceased demanding 25 sovereigns of gold ornaments more. There was also allegation that the sister's husband

of the accused, Chathu, who was also an accused, made advances towards her.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 13, Exts.P1 to P17 and MOs.1 to 5. The defence examined DW.1 and got marked Exts.D1 and D2 series, Ext.D3 series and Ext.D4.

4. The court below convicted the accused for the offence under Section 498A and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.25,000/- and in default to undergo rigorous imprisonment six months.

5. The prosecution evidence in support of the allegations of harassment mainly consisted of the testimony of PW.1-the father of the deceased, PW.6-the mother of the deceased, PW.7-a neighbour and PW.8-a person who had allegedly mediated. The court has mainly rather exclusively relied on the evidence with respect to Ext.P3 letter allegedly written by the deceased which was found to have been proved by PW.1-the father, wherein she had mentioned about the incident of herself and her parents humiliated by the parents and

sister of the accused when she along with the child were taken to the house of the accused as instructed by the accused over telephone from abroad. The above piece of evidence was found to have been properly proved which was found to be sufficient to establish that the accused was constantly harassing the deceased attracting Section 498A I.P.C.

6. It was noted by the court below that in Ext.P1(a) F.I.R, PW.1-the father of the deceased had not alleged any specific incident of harassment or the demand of gold ornaments from the part of the accused, that he had only alleged suspicion regarding the death of his daughter. It was found from the evidence of PWs.1 and 6 that for about one month preceding the death of the deceased, she was living in the house of the accused along with the accused and his parents and the wives of elder brothers. According to PW.1, when the couple visited his house immediately after marriage for a treat, the deceased was not happy and that she informed PWs.1 and 6 that the accused and his father are demanding 25 sovereigns of gold ornaments more. Subsequently, after two weeks when the couple came for another treat, she appeared rather sick and was told that she is not getting sufficient food and is not even provided with tooth paste. After 90

days of delivery, the deceased was again sent to the house of the accused and, after about one month, when PW.6 visited her, she returned to the house of PW.1 with the child. Thereafter, she was not willing to go to the matrimonial home. The practice was that when the husband telephones at the time when he returns from abroad she will be taken to the matrimonial home. On one such occasion when PWs.1 and 6 the parents took the deceased and the child to the house of the accused, they were severely ill-treated by the in-laws and the sister of the accused and at the time the accused deliberately kept away from the house. The parents and the deceased were made to wait for half an hour, and still the accused did not come to the house. The deceased at the time was crying when they returned. After that she was residing in her parental home. It was thereafter there was a mediation and it was agreed that she will reside with the accused in his house whenever he comes back from the Middle East. The last time she was not willing to go to the house of the accused. But it was at the insistence of PW.1 and the mediators that she went to the house of the accused. It is the version of PW.1 that after about four to five days prior to his daughter's death, he along with his son-Anoop and PW.8-a mediator had gone to the house of the accused for inviting the couple for Onam celebrations. At the time the accused and PW.8

were closeted in a separated room and he repeated his demand for 25 sovereigns of gold ornaments more. This was communicated by PW.8 to PW.1 on their way back. The deceased was the only daughter of PWs.1 and 6. It was brought out in the cross-examination of PW.1 that the deceased was admitted in the hospital of Psychiatrist Dr.Prakashan at Vatakara for three to four days for observation and that she was further taken to Dr.Vasudevan. It was further brought out in the cross-examination that he has not stated in his Section 161 Cr.P.C statement that the accused herein had demanded 25 sovereigns of gold ornaments. It was also brought out that in the trial of S.C.No.458/1999, he had stated that he came to know that the deceased was ill-treated at the house of the accused by demanding gold ornaments only after the death of the deceased. In the cross-examination he has also admitted the handwriting in Exts.D1 and D1(a) greeting cards, sent by the deceased to her husband, the accused, are in the handwriting of the deceased, wherein, the writings reflected very cordial relationship between the wife and the husband. It was also brought out in the cross-examination that he has not stated in Section 161 Cr.P.C statement that the accused had complained that the marriage with the deceased was not upto the standard of his family which is also his statement before the court. It was brought

out in the cross-examination that PW.1 stated to the police that the accused had informed him over phone that the couple would not be visiting the house of PW.1 for Onam and stated that they would come later. It was also brought out that on 10/09/1997, the date on which he allegedly went to the house of the accused along with his son-Anoop and PW.8 to invite the couple for Onam, the presence of PW.8 was not mentioned when he was questioned by the police.

7. So also the evidence of PW.6 the mother contained a number of discrepancies. It is the evidence of PW.6 that it was after delivery when she was taken to the house of the accused that the deceased complained of ill-treatment in the house of the accused and that she was not provided with tooth paste at the house of the accused. As noted by the court below, in the evidence by PW.1 who had stated that the deceased mentioned about the above harassment at the time when they came for a treat after marriage. She has also narrated the incident of the parents and the sister of the accused humiliating herself and her husband and the deceased when they along with the child went to the house of the accused. It was also found that their demand of 25 sovereigns of gold allegedly made by the accused has not been stated by her when the police questioned her. She has also

not stated to the police that when PW.1 and her son-Anoop went to invite the couple for Onam, PW.8 had also accompanied PW.1.

8. The evidence of PW.8 is that he had mediated in the matter and that he had gone to the house of the accused along with PW.1 and Anoop and at that time the accused took him to a room and after closing the doors conveyed that he will go to the house of the deceased only if he gets 25 sovereigns of gold more. It was brought out in the cross-examination that he has not stated so before the police. As per Ext.D3(a) his version was that he heard from PW.1 and Anoop when PW.1 and Anoop visited the house of the accused two to three days prior to Onam for inviting the accused and the deceased that the demand for gold was made by the accused. The trial court has specifically found that the version of PW.8 and the incorporation of PW.8 is a definite improvement in the case and the version of the witnesses in this regard is unreliable.

9. The evidence of PW.7-the immediate neighbour to the house of the deceased to whose house the accused used to make telephone calls from abroad to talk with the deceased as there was no telephone connection in the house of the deceased, was also found not to be

credible. According to PW.7, once when the deceased attended the phone, she was crying and that she mentioned that the accused is demanding 25 sovereigns of gold more. PW.7 has stated that once when she attended the telephone, the accused reiterated that he should be given atleast the chain worn by the mother of the deceased. She had no such case when the police questioned her, it was brought out.

10. It was brought out from the evidence of PW.11, the Investigating Officer that PW.1 had not stated that the accused had demanded 25 sovereigns of gold. There was also no case for PW.1 that the relatives of the accused was harassing the deceased at the instigation of the accused as he has stated before the court.

11. The incident narrated in Ext.P3 letter, i.e. episode of humiliation by the parents and sister of the accused on the deceased and her parents when the deceased was taken along with the child to the house of the accused and the fact that Ext.P3 is written by the deceased, according to the court below stood proved from the evidence of PW.1 and when Ext.P3 is compared with Ext.P4 note book the version of PW.1 in this regard was found to be credible. In view

of Section 47 of the Evidence Act, the version of PW.1 was relied on. Of course, the court have found that the alleged presence of PW.8-the mediator when PW.1 and Anoop visited the house of the accused is only an embellishment. The version of PW.8 in this regard was also found to be unreliable as the above aspect is found to be a significant omission in their Section 161 Cr.P.C statement as noted above. The evidence of PW.7-the neighbour was also found to be not inspiring confidence. It is also noted that the demand for gold etc. is not mentioned in Ext.P3 letter. It was found that the evidence adduced is not sufficient to establish that the cruelty or harassment was inflicted in connection with the demand for dowry or that the alleged harassment was with a view to coercing the deceased or the relatives of the deceased to meet any unlawful demand for dowry.

12. The evidence of DW.1, the Professor and Head of the Department of Psychiatry and Vice Principal of Pariyaram Medical College, Kannur, that on 18/08/1997 she was examined by him and Ext.D4 is the prescription issued by him and that she was suffering from episodic illness and mood disorder and that on 01/09/1997 also she was examined by him and advised her to continue the medicines was also noted by the court below. The death was on 13/09/1997. It

was found in the opinion of the court below that when such a person was ill-treated, and especially a lady, the same is sufficient to drive her to commit suicide.

13. As contended by the counsel for the appellant, the only objective evidence to the ill-treatment is Ext.P3 letter. The date of the above letter is 19/10/1996, that is, about one year prior to the date of suicide. Further Ext.P3 did not contain any specific allegation against her husband. It was also pointed out that the court in S.C.No.458/1999 had specifically held that there is no similarity in the handwriting in Ext.P3 with that of Ext.P4 note book and the admitted handwriting of the deceased in the greeting cards. On a comparison it cannot be definitely held that Ext.P3 is in the handwriting of the same person who wrote the note book and greeting cards. It was pointed out that Ext.P3 was produced before the Investigating Officer after ten days of the incident, according to the prosecution; and that it was produced by the prosecution before the court only along with the final report. As observed by this court in **Aravindakshan Nair K.R. v. Essen Bankers and others [2007 (3) ILR 312]** relying on the Supreme Court decisions expert opinion ought to have been obtained in the matter. More prominent is that it is one year after the date of

Ext.P3 that the incident has taken place. The fact that the deceased was under psychiatric treatment at the time of death stands proved.

In the circumstances, I find that the accused is entitled to the benefit of doubt. The conviction and sentence imposed is set aside. The appeal is allowed.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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----th September, 2007